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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 14591 of 2004

Between:

Gosipathala Buda Penchalaiah S/o. Ankaiah,

aged about 50 years, Occ: Parikota Panchayat Village Secretary,
R/o. Parikota Village, Kailigiri Mandal, Nellore District.

..... PETITIONER

AND

1 The Superintendent of Police, Nellore, Nellore District.
2 The Dy. Superintendent of Police, Kavali, Nellore District.
3 The Station House Officer, Kaligiri P.S., Kaligiri Mandal,

Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ order or direction more particularly one in the nature of writ of Mandamus declare the inaction more particularly on the part of the 2nd respondent to hold an investigation and to file a charge sheet in the crime No.82/2003 on the file of PS. Kaligiri, Nellore District. amounts to erroneous, arbitrary and contrary to law and violative of Arts. 14 & 21 of the Constitution of India besides being the provisions contemplated under SCs & STs (PA) Act, 1989 and consequently direct the 2nd respondent to complete the investigation and to file charge sheet forth with in the Crime No. 82/2003 on the file of P.S. Kaligiri, Nellore District.

Counsel for the Petitioner: MR.T.C.KRISHNAN

Counsel for the Respondents: GP FOR HOME

The Court made the following:

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ORDER:

The petitioner seeks a writ of Mandamus declaring that the inaction on the part of the 2nd respondent/Deputy Superintendent of Police, Kavali to hold an investigation and to file a charge sheet in Crime No.82 of 2003 on the file of Kaligiri Police Station of Nellore District, as arbitrary, illegal and in violation of Articles 14 and 21 of the Constitution of India.

2. The petitioner states that he is working as a Village Panchayat Secretary of Parikota Village of Kaligiri Mandal, that on 22.11.2003 the Sarpanch of Parikota village – Sadda Chandra Sekhar Reddy, abused him in filthy language, calling him by his caste. That apart, during his absence, on the intervening night of 27/28.11.2003 all the Government records, kept in his residence under the lock and key, were stolen. The petitioner suspected that the Sarpanch of the village might have committed the theft. Immediately, he lodged a complaint with the 3rd respondent in which he also complained about the

incident that took place on 22-11-2003. On the basis of the said complaint, a crime was registered under Crime No.82 of 2003 by the 3rd respondent for the offences punishable under sections 457 and 506 of the Indian Penal Code and Section 3 (1) (x) of Scheduled Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989.

3. The grievance of the petitioner is that though the crime was registered as long back on 28.11.2003, the 3rd respondent failed to take any further action and so far no charge sheet has been filed and even the stolen records have not been traced. Hence this writ petition.

4. On behalf of respondents, a counter affidavit has been filed by the Sub-Divisional Police Officer, Kavali, stating that basing on the complaint of the petitioner, Crime No.82 of 2003 was registered on the file of the 3rd respondent on 28.11.2003. Thereafter, investigation was taken up by the then Sub-Divisional Police Officer, Kavali, who after completion of investigation, closed the case as 'false' and prepared a final report to the said effect. After obtaining permission from the competent authority i.e. Additional Director General of Police, Andhra Pradesh, Hyderabad, the then Deputy Superintendent of Police, Kavali, who is the investigating officer, sent a notice dated 04.07.2004 to the petitioner/complainant, but however, the petitioner/complainant refused to receive the same and to that effect a report was prepared by the concerned police constable on 04.07.2004. The said final report was filed in the Court of the Additional Judicial First Class Magistrate, Kavali on 08.09.2004. Hence, the allegation of inaction is false and baseless.

5. The petitioner has disputed the version of the respondents and filed an affidavit in reply stating that no such notice dated 04.07.2004 was served on him, and the plea of the respondents that he refused to receive the said notice, is incorrect. It is also stated that at no point of time the respondents tendered any notice to him and in view of non-service of notice to the informant, the entire proceedings

are vitiated.

6. As can be seen from the pleadings of the respective parties, there is a dispute as to the service of notice of the final report on the petitioner/complainant. Whereas, the case of the respondent/Investigating Officer is that though the said notice was tendered on the petitioner, he refused to receive the same, the petitioner states that the respondents never issued any such notice to him. Such a disputed question of fact cannot be investigated into by this Court in exercise of jurisdiction under Article 226 of the Constitution of India and therefore the declaration as prayed for cannot be granted.

7. However, having regard to the facts and circumstances, the Writ Petition is disposed of, with a direction to the learned Additional Judicial First Class Magistrate, Kavali, before whom the charge sheet is said to have been filed on 8-9-2004, to make necessary enquiry as to whether the notice of the final report was served on the petitioner/complainant or not, and to take necessary further action in accordance with law. Needless to mention that the petitioner/complainant be afforded an opportunity of personal hearing before recording a finding on the above issue. No costs.

Note:

Issue CC in one week

B/o

Dsr

Communicate a copy of this order to the

Addl. Judl. First Class Magistrate, Kavali.

ASSISTANT REGISTRAR

To:

1. The Superintendent of Police, Nellore,

Nellore District

2. The Deputy Superintendent of Police,

Kavali, Nellore District

3. The Station House Officer, Kaligiri P.S.

Kaligiri Mandal, Nellore District

4. The Additional Judicial First Class Magistrate,

Kavali

5. Two CCs to the Government Pleader for Home,

High Court Buildings, Hyderabad (OUT)

6. Two CD copies.